IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 83 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCONE TAX

Versus

HEIRS OF R N SHAH- GIRISHKUMAR R SHAH

Appearance:
MR MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 16/01/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

At the instance of Commissioner of Income-tax, Gujarat-IV, Ahmedabad, the Income Tax Appellate Tribunal, Ahmedabad Bench 'B', has referred following two questions of law for opinion of this Court in respect of Assessment Year 1976-77 :

1. Whether, on the facts and circumstances of the case, the Appellate Tribunal was right in law in holding that the share income received by Rasiklal from the partnership firm M/s. Nahalchand Dhanjibhai & Co. during the previous year under consideration was taxable in his hands in his capacity as Karta of the smaller HUF as comprised by himself, his wife and their two minor sons?

2. Whether, on the facts and circumstances of the case, the Appellate Tribunal was right in law in holding that the share incomes derived by Girishkumar, two minor sons of partner Rasiklal from the partnership firm M/s. Nehalchand Dhanjibhai & Co. during the previous year under consideration were not clubbable with the share income derived by Rasiklal from the said firm if that share income was taxable in Rasiklal's hands in his capacity as Karta of the smaller HUF ?

At the instance of the assessee, the Income Tax Appellate Tribunal has also referred following question of law for opinion of this Court arising out of R.A. No. 859/Ahd/1985, in respect of Assessment Year 1976-77 :

"Whether, on the facts and circumstances of the case, the Appellate Tribunal was right in law in holding that the share income derived by partner Rasiklal from partnership firm M/s. Nahalchand Dhanjibhai & Co. during the previous year under consideratioin was to no extent taxable in the hands of larger HUF comprised by Rasiklal, his wife and their major son Sureshchandra, their minor sons Girishkumar and Narendrakumar and their minor unmarried daughters ?"

2. The Income-tax Officer took the status of the assessee as individual as against HUF claimed by him. The I.T.O. also included the shareof minor under section

64 in the hands of the assessee. Further the share of income derived by the assessee from the partnership firm M/s. Nahalchand Dhanjibhai & Co. during the previous year under consideration was held not to be taxable in the hands of the larger HUF comprised by the assessee, his wife and their major son Sureshchandra, their minor sons Girishkumar and Narendrakumar and Rajendrakumar as well as their minor unmarried daughters.

3. Though the respondent is duly served, he has not appeared in the proceedings.

4. We have heard the learned counsel for the Revenue. The learned counsel for the Revenue states at the Bar that the controversies raised in the present Reference are concluded by the decision rendered in the case of brother of the assessee reported in CIT v. Ramanlal Nagindas Shah (1992) 195 ITR 9.

5. In view of the principle laid down by the High Court in the above quoted decision, Questions no.1 & 2 referred at the instance of the Revenue, are answered in favour of the assessee and against the Revenue; whereas Question No.3, which is referred at the instance of the assessee, is answered in favour of the Revenue and against the assessee. The Reference accordingly stands disposed of, with no order as to costs.

(J.M.Panchal,J.)

(M.S.Shah, J.)

(patel)